

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Daniel R. McClain, #268976,)	
)	C/A No. 9:05-3077-MBS
Petitioner,)	
)	
vs.)	
)	OPINION AND ORDER
William White, Warden of Broad River)	
Correctional Institution,)	
)	
Respondent.)	
_____)	

Petitioner Daniel R. McClain is an inmate in custody of the South Carolina Department of Corrections (SCDC). On November 3, 2005, Petitioner filed a document entitled “Extraordinary Writ of Mandamus.” Petitioner alleges that he has received inadequate medical treatment and been subjected to retaliation. Petitioner seeks “immediate, independent health care outside the S.C.D.O.C.” and a “transfer to a Federal custody where he believes adequate treatment will be provided.” Extraordinary Writ of Mandamus, p. 3 (unnumbered).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge George C. Kosko for pretrial handling. The Magistrate Judge reviewed Petitioner’s submission pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A and the Prison Litigation Reform Act of 1996. On November 7, 2005, the Magistrate Judge filed a Report and Recommendation in which he recommended that the case be summarily dismissed without prejudice because the court is without jurisdiction to compel action by state officials. Petitioner filed no response to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After review of the record, the court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The case is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

December 6, 2005

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.